No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Eugene Wzorek
_____ — PETITIONER
(Your Name)

VS.

City of Chicago,
an Illinois Municipal Corporation
_____ — RESPONDENT(S)
[Whose Response is Currently Barred, see Rule 11(e)]

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Northern District Illinois, Eastern Division;

United States Court of Appeals for the Seventh Circuit

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

_____
(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Eugene Wzorek
_____ — PETITIONER
(Your Name)

vs.

City of Chicago,
an Illinois Municipal Corporation
_____ — RESPONDENT(S)
[Whose Response is Currently Barred, see Rule 11(e)]

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eugene Wzorek
(Your Name)

4344 S. Honore
(Address)

Chicago, Illinois 60609
(City, State, Zip Code)

773-254-3582
(Phone Number)

QUESTION(S) PRESENTED

1. When is an "official record of the court", as being found to be in absence from the court record and thus remaining in-locatable (as perhaps being lost, misplaced, mislabeled, mishandled, stolen, destroyed or otherwise "perpetually missing"), to be cited as "missing" and thus standing in default of Federal Statute and requirements of evidence by high officials of the court, regardless of what effect this determination might have on any ruling/s?

2. When, or how, is it EVER "appropriate" for Plaintiff, Defendant, or any other officials, assigns or representatives of the court to ATTEMPT to hide, conceal, obfuscate, impede, impair, deride, degrade, defame, or otherwise prevent the full presentation of court-appointed expert witness in sworn medical testimony, that as having happened with Defendant's full participation and agreement with proceedings in cross examination; and if ever so, then under what conditions, and thus how many times may this occur, before Summary Judgement is issued against responsible parties by and as direct result of default of Rules of Evidence, nul tiel record, trial by record, and or Rules of the Court?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

With exception of the case cited below, then as Case of Precedent under Shakman all case information cited herein refers to #84-CV-9978 and associated case numbers, as appearing within the enclosed motion and contained herein (including the attendant attachments thereof):

STATUTES AND RULES

Please see page following, which bears section heading: "CONSTITUTIONAL AND STATUTORY PROVISIONS INVOVLED"

OTHER

With exception of material in Appendix A, all other materials included as evidence are included in attachment (A-Q) to this motion, in direct supplement to this motion. Citing pro se, in forma pauperis, by Leave of the Court.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is USCOA Seventh Circuit, 906 - F2d - 1180,

[X] reported at case nos. 89-1868, 89-2988; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[ ] For cases from **state courts**: n/a; #84-CV-9978 began at Federal courts, due to Shakman.

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 13 July, 1990.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: see NOTE below, and a copy of the order denying rehearing appears at Appendix n/a.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

(NOTE, re "JURISDICTION": re-filing was timely, however record remains hidden in appellate court; record unavailable. Filing for Plaintiff was James Chesloe, motion researched by Steven Becker.)

[ ] For cases from **state courts**: n/a; #84-CV-9978 began at Federal courts, due to Shakman.

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, United States Constitution provides in pertinent part:

> The citizens of each State shall be entitled to all privileges and immunities of citizens in the several states.

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law... abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall... be deprived of life, liberty, or property, without due process of law;...

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 753(b) provides in pertinent part:

> Each session of the court... shall be recorded verbatim by shorthand, mechanical means, electric sound recording, ...
>
> The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

18 USC § 2076 provides in pertinent part:

> Whoever, being a clerk of a district court of the United States, willfully refuses or neglects to make or forward any report, certificate, statement, or document as required by law, shall be fined under this title or imprisoned not more than one year or both.

Rule 11(e), Illinois Code of Civil Procedure and Rules of Court, Smith-Hurd Illinois Annotated Statutes, Federal Court Rules, U.S. Court of Appeals for the Seventh Circuit, U.S. District Courts of Illinois, Chapters 110 (Practice) and 110A, (Practice Rules), Received to August 12, 1987, provides in pertinent part:

> ... The party who has withdrawn the record may not file a brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn...
>
> Failure of a party to return the record to the clerk may be treated as contempt of this court.

STATEMENT OF THE CASE

Case #84-CV-9978 begins 16 Nov. 1986 with Plaintiff's filing of a Civil Rights case under The Shakman Consent Decree, Defendant being City of Chicago, An Illinois Municipal Corporation.

On 11/06/87, in Northern District Ill. E.D., Judge Bernard Martin Decker decides against Defendant's (City of Chicago et al) Motion for Summary Judgement; case is reassigned to Judge Brian Barnett Duff 31 Dec. 1987.

After hearings and trial by bench (as required under Shakman), on 21 March 1989 Justice Duff issues a favorable decision to Plaintiff, Eugene Wzorek, in form of Equitable Award in amount of $145,160.68.

On 04/27/89, Plaintiff files motion to direct Defendant to pay final judgement; on the same day, Defendant files EMERGENCY NOTICE OF APPEAL with USCOA Seventh Circuit for stay of execution, judgement and wavier of bond, pending appeal; a temporary stay is granted.

Plaintiff, whom has suffered psychological damage at the hands of Defendant, already stands in need of medical treatment in order to return to employ. On 16 Aug. 1989, court appointed expert witness Dr. Jan Fawcett gives sworn testimony to Northern District Ill. E.D., as FOR THE THIRD TIME (Dr. Fawcett's first two appearances before Justice Duff being 01 and 02 November, 1988).

On 06 Sept. 1989, Judge Duff again orders in favor of Plaintiff, the following: to increase back pay award by $14,500.00, adding prejudgement interest of $362.50; further awarding Plaintiff "front "pay" in amount of 33,518.17; and in order to provide for Plaintiff's rather extensive medically necessary psychiatric treatment, so that a reasonable conclusion might be made by the Court as to reinstatement to employ, Justice Duff orders additional amount up to $150,000.00.

Then on 11 May 1990, Seventh Circuit Appellate Court heard argument in Defendant's appeal of previous equitable decisions in #84-CV-9978, these cases being #89-1868 and #89-2988; at that time, then-assistant U.S. Attorney Lawrence Rosenthal performed Defendant's oral arguments, thus taking on the role of acting Corporation Counsel for Defendant.

Then on or about 26 June 1990, as per signed clerk's receipt, USCOA Seventh Circuit, acting Corporation Counsel for Defendant Rosenthal did physically remove the master audio tape recording of the court's 11 May 1990 hearing from court record; and since to present date, no record of that tape's return can be found,

"STATEMENT OF THE CASE" Concludes on following page

nor can any record or copy of said tape from 10 May 1990, similarly be found or located; thus Defendant's acting Corporation Counsel Lawrence Rosenthal did commit a direct violation of Rule 11(e), Illinois Code of Civil Procedure and Rules of Court (12 Aug. 1987), on Defendant's behalf (as clearly to detriment of all parties except perhaps Defendant); thus, by stated intent of Rule 11(e), holding Defendant's acting Corporation Counsel Rosenthal and Defendant, City of Chicago et al, as potentially in contempt of court, but also by stated intent in Rule 11(e), responsible parties are barred from filing any "brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn..."

Approximately 17 days later, on 13 July 1990, WHILE MASTER AUDIO TAPE RECORDING EVIDENCE of 10 May 1990 oral arguments remains in absence from Court record, having been signed from clerk's possession by Defendant's acting Corporation Counsel Rosenthal, USCOA Seventh Circuit issues ruling in #89-1868 / #89-2988 reversing Judge Duff's 06 Sept. 1989 equitable award in judgement, amount up to $150,000.00 as set aside for purposes of remediating Plaintiff's medical damages, so the Court might proceed with reinstatement hearings; even as Rule 11(e) CLEARLY BARRS RESPONSIBLE PARTIES from filing ("entertaining") any such "brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn..."

Thus begins a series of retrenchments and retracements by the lower courts, whom ultimately seem "incapable" of grasping the simple and singular wording of Rule 11(e) as for all intents and purposes regarding the case of #84-CV-9978, Eugene Wzorek, Plaintiff, v. City of Chicago et al, Defendant, wherein RECORD WAS NEVER RETURNED.

Plaintiff's first inklings of this "conflict" of record removal by Defendant's acting Corporation Counsel, and subsequent (post filing, post removal) decision by USCOA Seventh Circuit happened while reviewing Court records and the case docket in preparation for this Supreme Court petition, as during the first week of June, 2018, but no later than the first week of July, 2018, rendering laches, res judica, etc. for this Petition as not applicable;

While in any case, Plaintiff herein cites that Defendant's and Defendant's acting Corporation Counsel's efforts at Fraudulent Concealment of these and other actions tolls any otherwise applicable statute of limitations in this most egregious violation of Plaintiff's Due Process and Civil Rights.

REASONS FOR GRANTING THE PETITION

a. The Court must answer regarding a First Amendment filing.

b. The Court must answer regarding a Rule 11(e) violation.

c. The Court must stand in Equity on behalf of Plaintiff, due to Plaintiff / Petitioner's standing and previous Equitable Awards, as Case of Precedent in the Shakman Consent Decree.

d. Plaintiff's timeliest and most well-intentioned efforts to date have been studiously "avoided" and or refused at each and every previous citation and or filing regarding Defendant's outstanding Rule 11(e) violation in the lower courts (those courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit).

e. Plaintiff's timeliest and most-well-intentioned efforts in the lower courts to date have been studiously "avoided" and or refused at each and every previous citation and or filing regarding any mention whatsoever of erroneous, falsified, and or missing transcripts regarding key witness testimony and court dates (those courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit).

f. Plaintiff's timeliest and most well-intentioned efforts to date regarding certain Awards in Equity have been studiously "avoided" and or overturned and or refused during virtually every previous citation and or filing regarding Plaintiff's initial three (3) prevailing decisions in Shakman, including two (2) Equitable Award/s (those courts being USCOA for the Seventh Circuit, and then later Northern District Illinois E.D. [from whose bench said prevailing Decisions and Awards originated]); obfuscaton and concealment is such that even today, no mention whatsoever of the City's historic loss of Shakman to Plaintiff and Petitioner Eugene Wzorek can be found or located in the entire Fifth Report of the Special Master on Shakman (filed 27 April 2017, Case: 1:69-cv-02145, Document #: 4988) - duplication of which is omitted herein, since report as cited is readily available elsewhere.

THIS LISTING CONTINUES ON THE FOLLOWING PAGE.

g. Plaintiff has been suffering for more than 30 years, being rendered "unemployable" by psychological conditions, source of which Defendant, City of Chicago et al, was prior deemed "responsible" by way of Court hearing and decision, as by expert medical testimony (Dr. Jan Fawcett, Court appointed expert witness, with other medical witnesses being barred from testimony), and also as by Plaintiff's testimony; while Plaintiff's efforts to receive adequate treatment and or compensation for the same have been studiously "avoided" and or refused during virtually every subsequent filing to recover Plaintiff's aforementioned Equitable Award/s and or medically necessary treatment, resulting in conditions which literally "stole" Plaintiff's best and most crucial earnings years, livelihood, health, retirement and pension possibilities, but also his quality of life; this as per Defendant's demonstrated will and intent, as exhibited by behavior both in and out of the court room.

h. Defendant's Fraudulent Concealment tolls any applicable statute of limitations - this, by way of removing, hiding, or otherwise obscuring Court documents of case record; and or else by concealing facts and medical evidence of the case by obscuring, hiding, removing from record, denying or otherwise engaging in "negligent record keeping" or omission as regards matters of Court records in evidence, as those being hidden from Plaintiff, but also as being hidden from the Court itself (affected courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit; but as of this Petition, then also revealed as being hidden from view of this very Supreme Court of The United States.)

i. Plaintiff Wzorek's case #84-CV-9978 began in, was tried, and continues to this present day as a veritable "case study" in the detrimental, personally devastating effects of political patronage against workers in the workplace, with all this statement implies. It is well within the very best of public interest, and the interest of this most Honorable Court of the United States, to grant hearing and or summary judgement for Plaintiff as regards the abuses and official offenses cited herein, that this most esteemed body might stand in opposition to "political winds of the day" and, in so doing, may strive to secure a better, more equal, and more prosperous future for the citizens of these United States of tomorrow.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: _____

CERTIFICATE OF COMPLIANCE

No. _____

Eugene Wzorek,
Petitioner
v.
City of Chicago,
An Illinois Municipal Corporation,
Respondent
[Whose Response is Currently Barred,
Under Rule 11(e)]

As required by Supreme Court Rule 33.1(h), I certify that this petition for Writ of Certiorari contains approximately 8,985 words, excluding the parts of the Petition that are exempted by Supreme Court Rule 33.1(d).

All text in the Petition is 12 point Century Schoolbook, unless otherwise specified in guidelines; text and images in Appendix / evidence in attachments appears as it exists, prior to PDF formatting for size only.

As per formatting, I did my best to obtain the "booklet" format for Petition; accompanying documents in preliminary pages, Appendix and attachments will all be found in 8.5 x 11 format, as many of these were provided in the same. Citing financial hardship, *in forma pauperis,* Leave of the Court.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my abilities to determine.

Executed on _____ day of _____ , 2018

_____

Eugene Wzorek
4344 Honore Street
Chicago, Illinois 60609

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Eugene Wzorek
_____ — PETITIONER
(Your Name)

VS.

City of Chicago,
an Illinois Municipal Corporation
_____ — RESPONDENT(S)
[Whose Response is Currently Barred, see Rule 11(e)]

PROOF OF SERVICE

I, Eugene Wzorek, representing pro se, do swear or declare that on this date, _____, 20__, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Edward Siskel, Office of Corporation Counsel, City of Chicago
30 North LaSalle Street, Suite 700
Chicago, Illinois 60602

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2018

_____
(Signature)

No.

In The

Supreme Court of the United States

Eugene Wzorek,
Plaintiff and Petitioner,

v.

City Of Chicago,
an Illinois Municipal Corporation,
Defendant and Respondent
[Whose Response is Currently Barred, See Rule 11(e)]

PETITION FOR EMERGENCY HEARING, WRIT OF CERTIORARI

To US Court Of Appeals, Seventh Circuit

Eugene Wzorek,
representing pro se
4344 S. Honore Street
Chicago, Illinois 60609
773-254-3582

Petitioner and Plaintiff, Eugene Wzorek, presenting to this body Petition for Emergency Hearing, Writ of Certiorari, regarding the following matters in Northern District Ill. E.D. case #84-CV-9978, Case of Precedent in Shakman Consent Decree (Wzorek being the only prevailing Plaintiff in Shakman), as per:

The direct and indirect omission of sworn court testimony by expert witness and physician, Dr. Jan Fawcett, as regards case #84-CV-9978, Wzorek v City of Chicago; and then, as regards actions undertaken by sworn officers of the Court, and possibly others, in order to evade detection of Defendant's own mis-dealings in these and other matters of deception and or concealment of matters in court record, as demonstrated by the absence of medical testimony of record by court appointed expert witness, Dr. Jan Fawcett, during these and other related Federal proceedings, as cited herein.

This matter is longstanding and of utmost importance to the Court, since Wzorek v. City of Chicago et al is the only case of record wherein Defendants (City of Chicago) lost a Shakman during the more than 40-year history of the Shakman Consent Decree – making Wzorek v. City of Chicago the Case of Precedent in matters of political patronage, which is and remains the basis of the Shakman Consent Decree.

Despite Plaintiff Wzorek's "winning in court", Plaintiff contends that subsequent and improper post-decision filings and omissions by Defendant have caused grievous, un-tolled, unaccounted for, lasting and ongoing harm to Plaintiff, Eugene Wzorek; and that these violations against Plaintiff are so extreme and persistent as to exist to the present day, consisting of continual and ongoing violations of Plaintiff's (Eugene Wzorek) First Amendment Rights;

But also, as continuing violations under the Shak-

man Consent Decree, in which this case was originally heard and decided, this places the need for an honorable decision and resolution to the demonstrated conflicts of interest and official misconduct at the mishandling of Plaintiff Eugene Wzorek, as by Defendants, City of Chicago et al, and potentially others, as existing firmly within the Public's Best Interest.

As per case docket (attachment A), #84-CV-9978 began 16 November 1984 as by Plaintiff filing with the Court. Rather than "swift justice", the case was delayed at every possible turn, in large part by activities of Defendant (City of Chicago) for several years until late 1987 when arguments were presented in Northern District Illinois E.D. and a decision against Defendant's (City of Chicago et al) Motion for Summary Judgement Against Plaintiff was denied, Judge Bernard Martin Decker issuing that memorandum opinion (attachment A, items 48 and 49, 11/06/87; also attachment M, #84-CV-9978, Decker opinion, 05 November 1987). Shortly after and owing to declining health, Judge Decker had the case reassigned.

On 31 December 1987, Judge Brian Barnett Duff was assigned #84-CV-9978 for continuation (attachment A, case docket, top of page 4 with "--" listed as item number, "Pursuant to the order of the Executive Committee, cause is reassigned to the calendar of Judge Duff").

On 01 and 02 November 1988 as part of "hearings on damages" (attachment A, item 100; also item 104) Dr. Jan Fawcett was summoned to give sworn expert medical testimony in Wzorek v City of Chicago, #84-CV-9978, AS THE COURT'S APPOINTED EXPERT WITNESS (attachment A, item 90, 08/01/88); wherein after the suppression of testimony of two prior requested medical witnesses at Defendant's objection (those witnesses being Dr. Nicholas Borden and Dr. Harold Weiss), Judge Brian Barnett Duff appoints Dr.

Jan Fawcett as expert witness for the Court, with Defendant's participation.

Following bench trial and hearings, on 21 March 1989 Judge Duff issues a second decision favorable to Plaintiff, Wzorek, in the form of an Equitable Award in amount of $145,160.68; (attachment A, item 118, 03/21/89; also attachment B, 708 F. Supp. 954, Eugene Wzorek v. City of Chicago, No. 84-CV-9978, 21 March 1989).

The 01 and 02 November 1988 court appearances by Dr. Fawcett occurred during hearings regarding damages against Plaintiff Wzorek, whom had been prior examined by Dr. Fawcett but also two other physicians, Dr. Nicholas Borden and Dr. Harold Weiss. As per existing medical testimony, Plaintiff's illness was deemed the responsibility of Defendant in whole or as its most significant part.

As of the earliest dates of this critical medical testimony, Defendant undertook what can only be described as a "coordinated effort to suppress court ordered expert testimony", that of Dr. Jan Fawcett and others. As by the record, it now appears that effort was largely successful, though evidence of the deceptions undertaken by Defendants (City of Chicago et al) does exist. The remainder of this Petition more clearly outlines the various deceptions and methods used to suppress court appointed testimony of expert witness, Dr. Jan Fawcett, as per Eugene Wzorek v. City of Chicago et al, #84-CV-9978.

Continuing

On 04/27/89, Plaintiff Wzorek files motion to direct City of Chicago to pay final judgement (attachment A, items 121 / 122, 04/27/89); on the same day, 04/27/89, Defendant files EMERGENCY NOTICE OF APPEAL with Seventh Circuit, motion for stay of execution of judgement and for wavier of bond pending appeal (at-

tachment A, item 123, 04/27/89).

On 04 August 1989 (attachment A, items 131, 132, 133), Judge Duff orders Plaintiff's expert witness, Dr. Jan Fawcett to give deposition in open court as part of Defendant's examination, in response to Defendant's earlier efforts to bar expert witness testimony, by the record upholding Defendant's motion to bar testimony of Petitioner's "expert witness and previously undisclosed witnesses" in whole or part; this effectively bars two medical witnesses previously mentioned, Dr. Nicholas Borden and Dr. Harold Weiss, from giving sworn medical testimony, though neither Dr. Borden nor Dr. Weiss was under any sanction by the AMA, nor had either been sanctioned by any court for giving false or misleading testimony, rendering Defendant's motion as "highly questionable".

Findings, August 1989

As per court transcripts for hearing, 04 August 1989, Judge Duff states the following AS ALREADY HAVING OCCURRED (attachment N, transcript 04 August 1989, pg. 150 line 18 through pg. 151 line 7): "Mr. Ex [corporation counsel for Defendant], I made a ruling. I said how much money you should give this man [Plaintiff, Wzorek]. I also said that he should be able to take psychiatric care for the next six months, so that after those six months, I could make a determination of whether or not he [Wzorek] should be reinstated. You [Defendant] don't want him to have any money so you went upstairs [USCOA] and got a stay on some basis I still don't understand, and the man [Wzorek] doesn't have any money to pay a psychiatrist to do what he has to do in order for me to reinstate him. Now, you [Defendant] have set up a situation by your own choosing to deprive the' {sic} man of-any {sic} wages or any opportunity to have medical care. So Mr. Gubbins [Plaintiff's attorney] asked could we advance. {sic} this so we can take the pain off."

Judge Duff continues, reaffirming the intent of his original order, alluding to the presence of PRIOR sworn medical testimony; further, Judge Duff restates his contention that Defendant (City of Chicago et al) is directly responsible in depriving Plaintiff and Petitioner, Eugene Wzorek, of funds for medically necessary care (attachment N, transcript 04 August 1989, pg. 151, lines 10 through 18): "That's because of your [Defendant's] actions, not Gubbins' [Plaintiff's attorney] actions. His response to the situation was only because of the City just absolutely refusing to let the nature and spirit of my order be conducted by depriving the man [Plaintiff, Wzorek] of any money by which he could have his psychiatric care that he must have for me to make the ruling."

Judge Duff cites the ultimate goal of treatment for Plaintiff, Wzorek, is so that Wzorek may be reinstated to employment (attachment N, transcript 04 August 1989, pg. 151, lines 16 through page 152, line 2), citing potential for long-term ramifications of Defendant's actions:

"Now that's a dilemma of great impact. It was of your 'making {sic}. You make it; we will resolve it. This is an equitable proceeding. I am going to see to it that I get the psychiatric reports on this man [Plaintiff, Wzorek] before the City is off the hook. The front pay, if that's what you want to call it, is going to depend upon your allowing that to happen, okay? So you [Defendant] are not going to sit there and not let this man [Wzorek] get the psychiatric care that's going to be necessary for the doctor to be able to make a decision as to wether he should be reinstated. If this case has to take 20 years, I will keep jurisdiction over it."

Duff then reemphasizes the equitable nature of Plaintiff's award, and proceedings; but also alludes to perhaps coercion or deception in Defendant's dealings with Seventh Circuit; and again, Judge Duff cites

Defendant's direct responsibility for continuation of Plaintiff's illness and suffering (attachment N, transcript 04 August 1989, pg. 152, line 6 through 11):

"As far as I'm concerned, I made a ruling on a liquidated amount. You [Defendant] don't want to pay it. Interest is going to run, and I know the City has now got the Seventh Circuit to say that they [Defendant] don't have to pay what they [Defendant] owe. That's a whole other story. This is an equitable ruling, and it's a function where the City is responsible for this man's [Plaintiff, Wzorek] psychological deterioration.){sic}"

On 16 August 1989, Dr. Jan Fawcett gives sworn testimony before the Court in #84-CV-9978 for the third time. Dr. Fawcett's first two court appearances are 01 and 02 November 1988 (attachment A, items 100 through 103, and item 104), wherein Dr. Fawcett testifies as to Plaintiff Wzorek's psychological condition, disposition, and recommends a medically effective treatment for the conditions of which Wzorek now suffers (attachment C, Transcript, 16 August 1989, accompanying notations as cover sheet), evidenced by Judge Duff's noted comments of 04 August 1989 citing prior medical testimony, which occur prior to Dr. Fawcett's 16 August 1989 testimony and third appearance before the Court, which is now (and after many years' absence) finally in the case record.

In support of this contention, on pg. 8 lines 19 through 23 of the 16 August 1989 transcript, Duff cites that Dr. Fawcett's testimony is a return appearance to the court, and alludes to said prior (01 and 02 November 1988) testimony; however there is no prior "existing" testimony for Dr. Fawcett in the Court record, as can been found to date; therefore it appears that Dr. Fawcett's 01 and 02 November 1988 appearance in sworn testimony, as the Court's medical witness in #84-CV-9978, has been "cleansed" or otherwise removed from official record in the case, even as it re-

quired several years for a "reasonably accurate" copy of the 16 August 1989 transcript of court proceedings to be "produced" by the Court's transcriptionists and clerks.

[Footnote: attachment A, case docket, item #222 dated 11 October 1994; this citation denotes the apparent first "appearance" of a reasonably accurate and proper transcription of Dr. Fawcett's sworn testimony – to which Plaintiff and Petitioner, Eugene Wzorek, also possess two "earlier" clerk-supplied versions of said "transcript" from 16 August 1989, both of which appear to be "spoiled" or otherwise obscured by specific methodologies - consisting of the insertion of "wrong pages" not in court testimony for the case, multiple mis-datings on the cover page, being stamped with unrelated case numbers, carrying different transcriptionist's signatures, etc. - thus rendering Dr. Fawcet's sworn testimony in each of these earlier instances as remaining either unpublished (in one instance, Dr. Fawcett's testimony is missing entirely) or, if present, then as existing while listed under an unrelated case number and date, rendering record of Dr. Fawcett's 16 August 1989 sworn testimony via either of these earlier two "versions" of clerk supplied "transcripts" as "unavailable" by way of any normal search request; and, Wzorek contends that this "condition of unavailability" remained true for anyone seeking a copy of Dr. Fawcett's court testimony until 11 October 1994, as cited in the case docket item 222;

[It was only through Plaintiff Wzorek's persistence and years of requests that the final, "reasonably accurate" transcript was introduced to the Court – attachment A, item 222, dated 11 October 1994; It is this "reasonably accurate" transcript of 16 August 1989 which Plaintiff provides herein, for the record and for all purposes of this filing;

[This Court stands notified that Plaintiff is in possession of original copies of court provided transcripts, court stamped and signed paper copies of the previously cited "mistakes" for 16 August 1989, each of which obscures Dr. Fawcett's testimony in multiple ways - and thus, Plaintiff Wzorek stands ready to produce these "fraudulent" copies in their entire and unaltered physical form, as complete with contemporaneous clerk- and transcriptionist-applied handwritten sticky notes, upon Your Honors' summons.]

It is important to note that as of this filing (July of 2018), no audiotape recording or transcript (both

of which constitute "official" court record) of Dr. Fawcett's 01 and 02 November 1988 testimony has ever been furnished to Plaintiff Wzorek by any official of the Court, and have in fact been denied to Plaintiff at every turn when requested; this omission of sworn court testimony from evidence of record exists in direct contradiction to the Guide to Judiciary Policy, Volume 6, Court Reporting, section 120, "Authority" (attachment D, version: transmittal 06-011, May 1, 2018).

It is also important to note that as of Defendant's filing of EMERGENCY NOTICE OF APPEAL with Seventh Circuit, dated 04/27/89, then of the many specific and listed items in docket where transcripts are furnished to USCOA Seventh Circuit, no specific mention whatsoever if made regarding furnishing transcripts which bear the hearing dates "01 and or 02 November 1988", wherein Dr. Fawcett's previous sworn expert witness testimony was given to the Northern District Illinois E.D.; nor does it appear as if Dr. Fawcett's later 16 August 1989 expert witness testimony was ever furnished to USCOA Seventh Circuit Court, as by Northern District Ill. E.D. clerks and or staff (attachment A, specifically items # 125 dated 05/11/89, #126 dated 06/02/89, #127 dated 06/09/89, #139 dated 08/25/89, #147 dated 09/12/89, #151 dated 09/18/89, and #155 dated 10/05/89).

This omission of sworn testimony by court-appointed expert medical witness Dr. Jan Fawcett from Court's official record, as for the testimony dates of 01 and 02 November 1988 - and for the moment, excepting the existence of Dr. Fawcett's sworn testimony AS RECORDED in transcripts from 16 August 1989 proceedings in #84-CV-9978, which themselves were not "readily available" prior to 11 October 1994, according to the case docket and Plaintiff Eugene Wzorek's best recollection (attachment A, item 222, 11 October 1994), represent a "gap" of more than 5 years during

which accurate transcripts did not exist for any of Dr. Fawcett's three instances of critical medical testimony in this case – reflecting a general, widespread, prolonged and profound disregard for Plaintiff's due process rights, as it also constitutes a protracted and ongoing violation of Petitioner and Plaintiff Eugene Wzorek's First Amendment rights, with Plaintiff being treated in callous disregard, as per any such requests for tapes or transcripts by persons associated with Defendant (City of Chicago et al), Northern District Court Illinois, E.D., and even USCOA Seventh Circuit; but also potentially by any and all applicable court trascriptionists and clerks of record, whom are charged by the court with these official record keeping tasks, as specific to these and other glaring omissions in the Court's official legal record regarding #84-CV-9978, and related case numbers [those case numbers being #84-CV-9978, as the principal case; and cases #89-1868 and #89-2988 at the appellate level, then later #95-3470; and #05-CV-4141; but also something known as "94 C 1088", a case number which per Wzorek seems only to exist as a date stamp upon the cover page of one of the aforementioned "fraudulent" copies of 16 August 1989 transcripts in Plaintiff's main case – and this "mistaken" case stamp existed as being the only "transcript" available from the court for that case hearing, over the course of two flagrantly "botched" prepared copies furnished for that transcript date, these "mistakes" standing for more than five years before finally being corrected on 11 October 1994, in the form of the prepared transcript for that date, as Plaintiff provides herein].

Further, Plaintiff and Petitioner Wzorek contends that these "omissions" and "botched transcripts" constitute direct and compelling evidence of the "long reach of Chicago politics" such that not even the nation's highest courts and Court personnel are immune from the ill effects and "political duties" of partisan

political patronage, emphasizing the Public Interest in Wzorek v. City of Chicago et al;

But also stand as demanding the scrutiny of Your Honors, since by any reasonable account and at the most basic level, these "omissions" - as "mistakes" which were allowed to continue and then repeat, or else mutate and be held for posterity (as in Dr. Fawcett's "perpetual" 01 and 01 November 1988 omissions of testimony), over multiple requests for correction, despite proper citations and repeated efforts by Plaintiff and Petitioner Wzorek, as having happened with multiple sworn court officers and functionaries over a period of many years - constitutes not merely an active and ongoing violation of Plaintiff Eugene Wzorek's Civil Rights by Defendant (City of Chicago et al); yet more importantly, these "repeated omissions" of court ordered expert testimony stand as an existential threat to the sanctity and integrity of this great Court itself, and to the highest Law of this Land.

Continuing

On 6 September 1989, after re-hearing (for the third time) sworn expert witness testimony regarding Plaintiff's medical condition, Judge Duff orders to increase the award of back pay by $14,500.00 and awards prejudgement interest in amount of $362.50. Then, due to the passing of time since earlier decision, Duff further awards Plaintiff Wzorek "front pay" in the amount of $33,518.17. Judge Duff also further orders Defendant (City of Chicago et al) to provide for Plaintiff's court-determined medically necessary psychiatric treatment for a period of two years, up to the amount of $150,000.00 (attachment E, 718 F. Supp. 1386, Eugene Wzorek v. City of Chicago, #84-CV-9978, 6 September 1989).

Judge Duff's decision and findings of 6 September 1989 were predicated upon Plaintiff's sworn testimony, and upon the HISTORY OF SWORN EXPERT MEDI-

CAL TESTIMONY by court-appointed expert medical witness Dr. Jan Fawcett - testimony given in court on 01 and 02 November 1988, and also 16 August 1989 - as regards the cumulative psychological effects which years of maltreatment, denials, "endless" proceedings and numerous other mis-dealings at the hands of various City of Chicago employees, attorneys, associates and assigns had at that time already inflicted upon Plaintiff Wzorek, with illness and psychological damage upon Wzorek being deemed by the Court as Defendant's (City of Chicago et al) responsibility.

Therein Judge Duff attempts to fashion an equitable remedy for Plaintiff and sufferer Eugene Wzorek, based in Dr. Fawcett's sworn expert medical testimony and the Court's best practices, that allows and provides means for recommended months of inpatient care, but also for contiguous and integrated outpatient treatment, any needed therapies and follow-up, after which point Plaintiff is to resume status hearings with the Court in order to determine whether Plaintiff's medical progress and prognosis is adequate to allow Plaintiff to attempt return to regular employ;

By "progress", Judge Duff was not necessarily suggesting a return to City of Chicago employment, but instead refers to Petitioner Wzorek's being mentally and emotionally capable to attempt return to employ within the general workforce whatsoever, since Wzorek's condition was deemed profound, debilitative and chronic, as a direct result of Wzorek's treatment at the hands of Defendant, City of Chicago et al (attachment C, transcript, 16 August 1989, re: Court opinion and Dr. Fawcett's testimony, accompanying notations as cover sheet).

As a matter of this court determined testimony, it is Dr. Fawcett's expert medical opinion that Wzorek was been rendered deeply psychologically affected by a series of mistreatments, beginning no later than

Wzorek's firing by City of Chicago, which previous decisions had already found to be politically motivated, constituting direct violation of the Shakman Consent Decree on part of Defendant (City of Chicago et al) against Plaintiff, Eugene Wzorek (attachment A, item 90, 08/01/88; also attachment C, transcript 16 August 1989, re: Court opinion and Dr. Fawcett's testimony, accompanying notations as cover sheet).

Yet further, it is Dr. Fawcett's expert medical opinion that the condition affecting Wzorek is not only possibly chronic and long term, but also (and at that time) potentially treatable under proper medical supervision and care; and that it was Wzorek's suffering from this same set of medical circumstances and perhaps this alone which had rendered Plaintiff unfit to return to work as a truck driver, whether that as being via reinstatement with City of Chicago or as employ elsewhere, while Wzorek remained buffeted daily from the underlying, untreated conditions and symptoms of the illness (attachment C, Notes, Dr. Fawcett's testimony, transcript 16 August 1989, re: Dr. Fawcett's statements, with accompanying notations as cover sheet).

Your Honors, for the record Eugene Wzorek would never again re-enter the workforce nor even general employment due to his suffering and lack of being able to afford effective treatment for this illness, the effects thereof he suffers unto this day.

Due to a number of critical factors detailed in later court proceedings (attachment C, transcript 16 August 1989, re: court opinion and Dr. Fawcett's testimony), not the least of which was Plaintiff's inability to return to employ as direct result of his ongoing psychological conditions at that time, Wzorek's underlying psychological distress and illness has remained to this day essentially unaddressed and untreated, the effect of which has rendered Petitioner Wzorek chronically unemployed throughout the remainder of his adult life;

yet also, chronically unemployable, as was established and foretold by Dr. Fawcett and attested to by Judge Duff in open court during sworn court testimony at that time, but at minimum, as happening on the 16th of August 1989 (attachment C, Notes as attachment per 16 August 1989 transcript, re: Dr. Fawcett's testimony and Judge Duff's comments, notation in accompanying cover sheet).

It was Judge Duff's court order of 06 September 1989 (attachment E, 718 F. Supp. 1386, Eugene Wzorek v. City of Chicago, #84-CV-9978) which sought to allow Wzorek means, via equitable award, for a combination of extended expert inpatient treatments and therapy, outpatient care and coordinated follow-up, made necessary by Wzorek's illness which the Court (Judge Duff), Plaintiff (Eugene Wzorek) and court-appointed expert witness Dr. Jan Fawcett all held in testimony as being due to the actions of Defendant, City of Chicago et al personnel, representatives, employees, agents, associates and assigns thereof.

Further findings

a. Judge Duff had prior requested from all attending attorneys to bring to the court comparable decisions and cases, at which point no such cases in equity were ever produced regarding Shakman, at any time or by any of the attorneys; therefore, and since no one had prior prevailed in a Shakman case (nor now, has any one since), Judge Duff during proceedings correctly cited Eugene Wzorek v City of Chicago et al, #84-CV-9978 as the Case of Precedent, and moved forward in hearings accordingly.

b. Judge Duff was also clear during proceedings that as Case of Precedent, Eugene Wzorek v. City of Chicago et al was to proceed under Old English Law and in Equity, wherein decisions thereof are not subject to vagaries of statutory pleadings (attachment C, transcript 16 August 1989, accompanying notations cit-

ing Judge Duff's comments re: the equitable nature of remedy in Wzorek v. City of Chicago, as comments to Defendant during proceedings; also attachment N, transcript 04 August 1989, with notations re: Duff's relevant comments as cover sheet).

c. Being that Defendant, City of Chicago et al, had prior entered into standing contract with the Court (attachment F, Shakman Judgement, Michael L. Shakman and Paul M. Lurie et al v. The Democratic Organization of Cook County et al, #69-CV-2145, 5 May 1972), then once violated by Defendant in anything as significant as loss at trial, the Shakman Consent Decree (as it is collectively known) offers Defendant (City of Chicago et al in this instance) no particular "protections" under law, and thus was not subject to appeal in statutory pleadings, since Defendant's violation of this longstanding and mutual contract ("consent decree") can only be considered "willful" and "negligent"; hence, Judge Duff correctly cites equitable remedy for Wzorek and rules accordingly.

d. Therefore, as of Judge Duff's Court Order of 06 September 1989 (attachment E, 718 F. Supp. 1386, Wzorek v. City of Chicago et al, #84-CV-9978), it was already well and prior established in court testimony, and understood by Defendant (City of Chicago et al) that Plaintiff Wzorek was being awarded damages in Equity Proceedings, a portion of which was commensurate to necessary, medically required, extensive psychological care, need of which for Plaintiff and sufferer Wzorek had been made necessary and or also further aggravated by the direct and indirect actions of Defendant, City of Chicago et al, over the very period of time since the offense which brought Defendant (City of Chicago et al) to the Court's attention in the first place, via Defendant's (City of Chicago et al) court demonstrated and previously cited violations of the Shakman Consent Decree, as occurring against

Plaintiff, Petitioner, and City of Chicago truck driver Eugene Wzorek.

In summary, Your Honors, even during these court proceedings, Defendant City of Chicago et al was utilizing every available means at disposal in order to further punish, penalize, cease and or delay justice for Plaintiff, Petitioner and sufferer Eugene Wzorek; and did so willingly and unceasingly, even after losing the protections and advantages it had traditionally enjoyed prior, this by wilfully violating the Shakman Consent Decree.

Writ of Certiorari

1. On 11 May 1990 during open court, while hearing case # 89-1868 / 89-2988, Seventh Circuit Appellate Judge Frank H. Easterbrook did state to City of Chicago acting Corporation Counsel (and then-Assistant US Attorney) Lawrence Rosenthal, "Didn't you think that some day somebody was going to win [a Shakman] some time?"

Further, in the same hearing on 11 May 1990, Judge Easterbrook stated "If you didn't like this [loss in Shakman, to Plaintiff Wzorek], then why didn't you get rid of the Shakman?" Supplied quotes are from the memory of Petitioner and Plaintiff Eugene Wzorek, whom was present at hearing. [attachment A, item #184, 08/10/90, citing hearing date of 05/11/90, decision of which was entered 13 July 1990]; and yet, these comments suggest that even the Justices of USCOA Seventh Circuit were "scratching their heads" regarding Defendant's (City of Chicago et al) efforts in appeal, since Defendant had already clearly violated a standing consent decree, and thus also a court order and mutually agreed contract currently under court supervision;

Thus and at that time, placing Defendant as currently standing in contempt of a court ordered decree,

the Shakman.

2. After said "coaching" of Defendant's attorney/s by Justice Easterbrook, USCOA Seventh Circuit went on to hear Defendant's appeal in Shakman – appeal of which is not provided for under the Shakman, since Shakman exists/existed as a Court Ordered contract and Consent Decree, of which Defendant, City of Chicago et al, was a consenting party and thus also participant signatory.

Once violated by Defendant/s, Shakman protections cannot be honored (or considered honorable) again, since violation of the Contract (Consent Decree) vitiates the contract itself, removing protections which might otherwise be offered to signatories had the Consent Decree not been violated. Hence, no provision for Appeal was given under the Shakman decision, and instead the Court (Northern District Illinois E.D. and USCOA Seventh Circuit) were and remain to this day duty bound under the Shakman decision to carry out Fiduciary, Restorative, and Punitive responsibilities in the instance of any Shakman violation, holding in Equity for Plaintiff/s, whereupon those responsibilities fall upon these justices in particular - though ultimately, as unto Your Honors - as originally ruled upon and agreed to by all parties under the Shakman decision (attachment F, specifically paragraph H2, Shakman Judgement, Michael L. Shakman and Paul M. Lurie et al v. The Democratic Organization of Cook County et al, #69-CV-2145, 5 May 1972).

3. While transcripts of proceedings are indeed court records, and despite multiple attempts by Wzorek at acquiring the same, no such transcripts have ever been provided to Plaintiff Wzorek from the 11 May 1990 hearing in USCOA Seventh Circuit #89-1868 / #89-2988; but even so, "A transcript was made from a tape, but the transcript is not the original; the tape is...We do not think that these should be deemed judicial re-

cords, unless some reason is shown to distrust the accuracy of the stenographic transcript," quote attributed to Judge Richard Posner, Seventh Circuit Federal District Appeals Court, Smith v. U.S. District Court Officers, 98-1423, 98-1548, 203 F.3d 440 (2000).

Therefore, in the instance of any identifiable discrepancy in transcripts (or a complete lack of transcripts whatsoever), which in the instance of USCOA Seventh Circuit cases # 89-1868 / #89-2988 have never been made available nor have otherwise ever been furnished to Plaintiff and Petitioner Eugene Wzorek; and since master audio recording tapes of proceedings are to be considered the true record of proceedings, citing Judge Richard Posner, Justice, Seventh Circuit Appellate Court, as per Smith v. U.S. District Court Officers, #98-1423 / #98-1548, 203 F.3d 440 (2000); then in and by way of these denials, Plaintiff Eugene Wzorek has been denied his most fundamental First Amendment rights as occurring by the action and inaction on part of Court officials, employees, functionaries and assigns of the Seventh Circuit Appellate Court itself, insomuch as those persons were acting in direct violation of court findings, Federal court policy, Federal statute, and the intentions and aims which constitute final settlement of signatories under the Shakman Consent Decree in denying Wzorek access to relevant tapes and or evidence in his case, responsibility for which ultimately falls under the direct supervision and oversight of this most Supreme judicial body, Your Honors.

4. Also occurring on 11 May, 1990, during Defendant's (City of Chicago et al) testimony in appeal, case # 89-1868 / #89-2988, then-Assistant U.S. Attorney Lawrence Rosenthal, representing and thus acting on behalf of Defendant, City of Chicago et al, did impugn himself and may have committed perjury and extrinsic fraud by pretending not to know of the content of

prior court recorded medical testimony in the case decisions under appeal (Wzorek v City of Chicago, #84-CV-9978) as regards Dr. Jan Fawcett's sworn expert testimony as medical witness, 01 and 02 November 1988, but also 16 August 1989); and that in so doing, City of Chicago acting Corporation Counsel Rosenthal did specifically and willfully materially misrepresent Defendant's responsibility within those same medical findings, as regards the nature, causation and illness suffered by Plaintiff and Petitioner, Eugene Wzorek, expert medical opinion of which was in fact (or at minimum, should have been) thrice duly recorded in prior sworn testimony, as given in open court by expert witness Dr. Jan Fawcett [attachment C, Transcript 16 August 1989; also attachment A, item 90, 08/01/88, stating "The Court appoints Dr. Jan Fawcett has [sic] its expert."];

Further, Wzorek contends that in so doing, Defendant's acting Corporation Counsel Rosenthal then during appeal in case # 89-1868 / #89-2988 "acted to obstruct justice" by means of concealing prior established court testimony by court appointed expert witness, Dr. Jan Fawcett, in case #84-CV-9978 (toward which appeals 89-1868 and 89-2988 were directed and attached), and that through this means, Defendant's acting counsel Rosenthal may have committed extrinsic Fraud Upon the Court, on the behalf of or at the direct or indirect request or instruction of Defendant, City of Chicago et al, by withholding vital evidence regarding critical prior medical testimony which had already been heard and weighed upon by Judge Brian Barnett Duff in Northern District Court Illinois E.D.; and that as such, without warrant, cause or jurisdiction, Defendant's acting Corporation Counsel Rosenthal did willfully and unlawfully attempt to overturn or delay a prior and medically urgent equitable decision in #84-CV-9978, that of the presiding justice in that case (see Judge Duff's decisions, attachment B,

708 F. Supp. 954, Eugene Wzorek v. City of Chicago, No. 84-CV-9978, 21 March 1989; also attachment E, 718 F. Supp. 1386, Wzorek v. City of Chicago et al, #84-CV-9978, 06 September 1989).

[Footnote: Attorney Rosenthal's Actions as Part of Defendant's Continuation of Similar Obfuscations]

[In sidebar to item 4 above, AVAILABLE medical evidence spoken of, sworn testimony by Dr. Jan Fawcett, 16 August 1989, was in fact hidden from the official transcripts of that date in #89-CV-9978 for a period of several years; while a transcript of Dr. Fawcett's medical testimony now finally "exists", Petitioner Eugene Wzorek has full evidence of this "ancillary," accompanying fraud and criminal manipulation of the transcript record itself, complete with multiple signatures (aka, "forgeries") and carrying various dates and or case numbers, on multiple court-stamped, court supplied, completely disparate "versions" of the "official transcript" of 16 August 1989; the full effect of which not coincidentally benefitted acting City of Chicago Corporation Counsel Lawrence Rosenthal and Defendant, City of Chicago et al, as aiding and abetting in this attempt at committing Fraud Upon the Court, via direct omission and or manipulation of Court established facts and the court-appointed expert witness testimony of Dr. Jan Fawcett, as has already been established in record herein;

[Therefore Petitioner, Plaintiff and sufferer Eugene Wzorek stands prepared to present this physical evidence, in the form of three DISTINCT, separate "versions" of the "final prepared document" of 16 August 1989 transcript in open court, for the immediate inspection and full attention of these Most Honorable assembled Justices;

[While these physical transcripts, and other evidence of fraud, malfeasance and mis-dealing have been cited in prior pleadings, neither Northern District Illinois E.D. nor the USCOA Seventh Circuit has ever allowed presentation of the physical evidence (actual physical copies, as described) in support of these allegations;

[Thus Petitioner, Eugene Wzorek, having been denied the opportunity to present substantiating physical evidence in court as regards various and numerous motions citing specifics of the same, has been denied justice by way of further, continuing and ongoing violations of Plaintiff Eugene Wzorek's First Amendment rights, rendering further pleadings on the part of Petitioner (Eugene Wzorek) on these matters within those specific venues as

"moot and compromised";

[But also, in consideration of Plaintiff's proposed presentation of direct physical evidence of Fraud Upon the Court, any normally contiguous statutory considerations such as laches, res judica, time barring, etc, can thus be demonstrated to violate Petitioner Wzorek's Civil Rights in equity proceedings, since fraudulent concealment tolls any applicable statute of limitations, thus presenting a substantial risk and moral hazard to the credibility and standing of this great Court itself, should the condition of "denial of justice" for Plaintiff be allowed to continue to stand, or else otherwise be left to "forfeit" as remaining unaddressed by this most prestigious Body, The Supreme Court of the United States.]

5. Yet further, and according to signed clerk's receipt, U.S. Court of Appeals Withdrawal Slip as record for the Seventh Circuit, acting City of Chicago Corporation Counsel Lawrence Rosenthal removed the master audio tape recording for case hearing recorded 11 May 1990, Seventh Circuit Appellate # 89-1868 / #89-2988 from the court records / evidence repository on or about 26 June 1990 (attachment G, Record Withdrawal Slip, United States Court of Appeals for the Seventh Circuit, signed by Attorney Lawrence Rosenthal, dated 26 June 1990, date stamped "Jul 18 1990"); and while at that time [and thus for the record] occurring under Rule 11(e), in it's current context then the ongoing refusal of Attorney Rosenthal to replace said recorded audio tape evidence back into Court record stands in clear defiance of Rule 11(e) of the Illinois Code of Civil Procedure and Rules of Court, Smith-Hurd Annotated Statutes, Federal Court Rules, U.S. Court of Appeals for the Seventh Circuit, U.S. District Courts of Illinois, Chapters 110 (Practice) and 110A (Practice Rules), active August 12, 1987, which was in full effect when Defendant's acting Corporation Counsel Rosenthal did physically remove this master court audio recording (attachment H, Rule 11(e), as published).

6. Plaintiff hereby cites acting Corporation Counsel Lawrence Rosenthal's removal of master audio tape

/ Court Record from the record in appellate hearings in USCOA Seventh Circuit cases #89-1868 / #89-2988; and thus Defendant's removal of permanent records from the case file; as gross violations of Plaintiff Eugene Wzorek's right to a fair trial;

But also, Wzorek cites acting Defendant's Corporation Counsel Rosenthal's complicity in "covering his own (attorney Rosenthal's) tracks" of grievous, damaging and potentially damning omissions of record - as regards priot Court testimony and findings, court orders, court opinion, expert witness testimony, and matters previously heard and decided in equity - regarding earlier court proceedings, as being aided and abetted in whole or part by this very act of acting Corporation Counsel Rosenthal's direct removal of the master court audio recordings from court record, as directly pertains to the case of record, #84-CV-9978;

And that these actions on part of Defendant's counsel Rosenthal constitute direct evidence of longstanding and continuing wrongdoing, with grievous harm to Plaintiff, Petitioner and sufferer, Eugene Wzorek;

But also in and of themselves, constitute separate and ongoing violations of the aims and intent of the Shakman Consent Decree, as to have occurred against Plaintiff, Petitioner and sufferer Eugene Wzorek throughout this entire period of time (being unto the present day) at the hands of Defendant and Defendant's assigns, City of Chicago et al., after having lost the Shakman decision to Wzorek.

7. In subsequent hearing resulting in decision, 23 July 1992, Judge Duff denies Plaintiff Wzorek access to copies of the master audio recording tapes of Wzorek's own case [record of which is found in attachment J, "Motion for access...", # 84-CV-9978, accompanying transcript 23 July 1992, Judge Duff's specific reasoning found on transcript pg. 3, line 22 and continuing through pg. 4 line 2;]. In this decision, Justice Duff

ineptly compares the court's official audio tape record to a stenographer's "pencil" - while in direct contrast and comparison to an official court record existing in the form of a mechanical audio/voice tape recording (as per Judge Richard Posner, Seventh Circuit Federal District Appeals Court, Smith v.U.S. District Court Officers, 98-1423, 98-1548, 203 F.3d 440, 2000), then by an honest equivalency, the "stenographer's pencil" Duff speaks of exists as nothing more than a commodity, a physical writing instrument which neither conveys nor bears any critical or differential information in any case whatsoever.

8. On 3 July 1996, Seventh Circuit Appellate Court, again with Judge Easterbrook, accompanied by Justices Cummings and Ripple, in a case directly related to 84-CV-9978 but listed in appellate court as 95-CV-3470, USCOA Seventh Circuit further denies Petitioner Wzorek's appeal to obtain copies of the master audio tapes of these otherwise improper and fraudulently flawed proceedings (attachment J, records on file, as USCOA for the Seventh Circuit, case # 95-3470, Ordered as rehearing "DENIED", dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple).

[Responsibility of the Northern District Illinois E.D., USCOA Seventh Circuit]

[As sidebar to Items 7 and 8 above, while pending evidence of this Rule 11(e) violation on the part of Defendant's acting Corporation Counsel Lawrence Rosenthal has been cited in several prior pleadings, neither the Northern District Illinois E.D., nor the USCOA Seventh Circuit has ever allowed such evidence to be presented in court hearing, even while rendering decisions against Plaintiff Wzorek in these filings apparently as based purely in the court's own "speculation" regarding physical evidence at Plaintiff's hand;

[And thus, without presentation of physical records, these decisions themselves constitute further and ongoing violations of Petitioner Wzorek's Civil Rights, since both venues have seen fit to allow this condition (missing evidence of record) to stand

throughout this entire period without applying adequate and direct Court supervision or Court ordered inspection of records as requested by Plaintiff;

[Thus, it appears to Plaintiff Wzorek that not only the Northern District Illinois E.D., but also USCOA Seventh Circuit both now also stand in clear violation of the aims and intent of Rule 11(e), thus currently barring either of these entities from filing further motions, briefs, memoranda or opinions in this current case, Petition for Emergency Hearing: Writ of Certiorari, Eugene Wzorek v. City of Chicago et al, re #84-CV-9978. [attachment J, records on file with transcript, "Motion for access to tapes / Appeal denied" - decision in 84-CV-9978 by Judge Duff, 23 July 1992, with accompanying transcript; also accompanying USCOA Seventh Circuit case # 95-3470, Ordered as rehearing "DENIED", dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple.]

9. In the instance of evidence presented herein regarding Defendant's appeal testimony, City of Chicago acting Corporation Counsel Rosenthal's active omission of vital evidence and expert testimony of Court record during court proceedings, in attempt at overturning or delaying a standing court order as per USCOA Seventh Circuit cases # 89-1868 / #89-2988, can be demonstrated to have resulted in that court's reversal of Plaintiff's Equitable Award for medically necessary care of up to $150,000, critically supportive medical testimony of which was, prior to decision, thus hidden and obscured from public review or the possibility of court scrutiny by way of "missing" master audiotape recordings, specifically those recordings pertaining directly to Attorney Rosenthal's / Defendant's appearance and testimony in open court on 11 May 1990, as per #89-1868 / #89-2988;

For which, Defendant's acting Corporation Counsel Lawrence Rosenthal himself signed the audiotapes in question out of court record and into his own possession, by his own hand;

Thus, with acting Corporation Counsel Lawrence Rosenthal did remove potentially "incriminating" master audio tape recordings from Court record, and

with that record being in his possession on behalf of Defendant, City of Chicago et al, then:

As evidence in matters of continuing judicial record of the actions undertaken by Defendant's acting Corporation Counsel Lawrence Rosenthal's active removal and omission of vital evidence during any and all subsequent hearings (including Defendant's appeals), Defendant's ill intent is further alluded to by Justice Duff in subsequent status hearings for case #84-CV-9978 (attachment C, transcript 16 August 1989, Duff's notations as cover page), taking special notice of Judge Duff's comments in dismay regarding:

[1] Defendant, City of Chicago et al, as potentially omitting vital court determined evidence from its appeals hearing, pg. 4 line 20 through pg. 5 line 2, suggesting perjury and or obstruction of justice on the part of Defendant; and [2] pg. 5 lines 1 and 2, wherein Judge Duff cites Defendant, City of Chicago et al, as having caused the problem of direct interference in this case by way of a court official (as evidence would cite, Defendant's acting Corporation Counsel Lawrence Rosenthal, but also potentially others) in the execution of an otherwise equitable final decision and award for Plaintiff's medically necessary care, as based on a substantial misrepresentation of known and court-established facts during later proceedings in appellate venue, again suggesting Defendant may have perjured themselves or otherwise obscured and or misrepresented vital medical testimony in USCOA Seventh Circuit during appeals proceedings.

10. As of the above evidence, the only logical conclusion available to Petitioner is that Defendant's acting Corporation Counsel Rosenthal, then later USCOA Seventh Circuit, and eventually even Northern District Illinois E.D., all variously "blamed" and defamed Plaintiff Wzorek, intentionally or otherwise; and did so by ultimately accomplishing a convolution of denial

of the very evidence of record and wrongdoing which is required to remedy the situation (to the task of which Petitioner and Plaintiff Wzorek stands ready);

And with these injustices occurring via missing / occluded / barred / obscured or hidden ("unavailable") court evidence of record, which in the instance of acting Corporation Counsel Rosenthal being removed at the hand of Defendant's (City of Chicago et al) acting Corporation Counsel himself; then, even as the Court later denies Petitioner Eugene Wzorek access to a copy of the official recorded audio tape of proceedings from 11 May 1990 (which has now apparently been in possession of acting Corporation Counsel Lawrence Rosenthal up to the present day without return to the court record), but also other tapes, this in direct defiance of Rule 11(e);

And being that the collective result of these actions has aided in the formulation of faulty and or potentially fraudulent, spoiled judgements during this intervening period (each pivoting around missing or "inadmissible" evidence of record as being denied to be produced in court by Plaintiff / Plaintiff's counsel in physical demonstration of the claims made thereof); even as said evidence requested, master audio recording tape of 11 May 1990, was missing from the Court's record;

Then by law and Seventh Circuit Rule 11(e), all case decisions contrary to Petitioner's pleadings which are directly relevant to the intentionally removed and or missing vital evidence of record must be vacated, granting Summary Judgement to Plaintiff, since Defendant (City of Chicago et al) is barred from any further filings with this Court until such a time as those vital records have been returned and secured to court holdings.

[Footnote: Rule 11(e) is very specific on this matter, as a punitive injunction against any form of official removal and or ma-

nipulation of crucial court records, evidence and holdings of proceedings; attachment H, Rule 11(e) as published.]

Further Citations

To this current date, there exists no record for return of 11 May 1990's master audio tape to the Court by Defendant's acting Corporation Counsel Rosenthal as per #89-1868 / #89-2988 (attachment K, George Schuch, "records request made in person", notarized affidavit and signed delivery receipts). Such request was recently made on behalf of Plaintiff by Mr. George Schuch at Chicago NARA records repository, 7358 South Pulaski Road, Chicago, Illinois on 04 June 2018; noting absence of vital records, Mr. Schuch took photographs of the file as it exists, noting omissions in a notarized Affidavit, copies of which were furnished NARA and USCOA Seventh Circuit, herein provided with USPS delivery notification receipts attached (attachment K, George Schuch, "records request made in person", notarized affidavit and signed delivery receipts).

It is also of vital importance in #84-CV-9978 (but also USCOA Seventh Circuit #89-1868 / #89-2988) to note that per Rule 11(e), then USCOA Seventh Circuit did inadvertently issue its ruling in this case while this vital evidence of record was missing from the case file.

Thus, by published Illinois Code of Civil Procedure and Rules of Court, August 12, 1987, Chapters 110 (Practice) and 110A (Practice Rules), Rule 11(e), this action of removal of the master audio tape transcript recording by Defendant's acting Corporation Counsel Rosenthal bars Defendant, City of Chicago et al, from filing any further motions with the Court until such time as missing evidence is returned to Court custody, which by record does not appear to have happened since it's removal, citing signed removal date 26 June 1990, evidence of record now having been absent

from the Court's file unto the date of this filing (attachment G, Record Withdrawal Slip, United States Court of Appeals for the Seventh Circuit, signed by Attorney Lawrence Rosenthal, dated 26 June 1990, date stamped "Jul 18 1990"; also attachment H, Rule 11(e) as published).

Thus, it is this Court's sworn duty as per Seventh Circuit Appellate Rule 11(e), Illinois Code of Civil Procedure and Rules of Court, August 12, 1987, to bar Defendant, City of Chicago et al, from any subsequent filing until the physical return of said Court Property of Record (attachment H, Rule 11(e) as published), to apply adequate and appropriate sanction against the actions of Defendant and it's acting Corporation Counsel, Attorney Lawrence Rosenthal, but also potentially against others, the actions of whom according to Court's published rules must by law result in summary judgement for Plaintiff, Petitioner and sufferer, Eugene Wzorek, in each of the following affected cases:

a) USCOA Seventh Circuit cases #89-1868 / #89-2988, which as being ruled upon by the Court while vital Evidence of Record was missing (as having been withdrawn by Defendant's Corporation Counsel approximately 17 days prior to decision), presents a decision which must be vacated and or overturned immediately;

b) The same result of which [Defendants being barred from further filing with the Court until such time as Evidence of Record is returned to the Court, per Rule 11(e)] thus vacates later dismissals of both Northern District Illinois E.D., Justice Duff, 23 July 1992, decision in 84-CV-9978 (attachment J, "Motion for access...", Duff decision with accompanying transcript of 23 July, 1992), resulting in Summary Judgement for Plaintiff;

c) And also Seventh Circuit Court of Appeals #95-

CV-3470, directly relevant to #84-CV-9978, decision of 3 July 1996 (attachment J, records on file, as US-COA for the Seventh Circuit, decision in case # 95-3470, Ordered as rehearing "DENIED", dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple), again resulting in Summary Judgement for Plaintiff;

d) But also 117 S.Ct. 710, Eugene Wzorek v. City of Chicago, case #96-6803, 06 January 1997 (attachment L, 117 S.Ct. 710, Eugene Wzorek v City of Chicago, #96-6803, 06 January 1997), since denial was based in these "flawed" but also potentially "barred" decisions in the lower courts;

e) And more recently, 05-CV-4141 (attachment P), resulting in Summary Judgement for Plaintiff;

Then, as citing Rule 11(e) regarding the handling and possession of official court records, the lack of which has apparently prejudiced the lower courts against Plaintiff, Petitioner and sufferer Eugene Wzorek by failing to provide or preserve vital court evidence, condition of which has placed Plaintiff Eugene Wzorek in a disagreeable, disadvantaged, irreconcilable and untenable position regarding further filings in attempt to restore Plaintiff's original equitable decisions and orders;

Then as required by law, as by published court procedure, with Defendant (City of Chicago et al) and Defendant's Corporation Counsel holding in direct violation of Seventh Circuit Civil Code, via Rule 11(e);

And also by law, since permanent or semi-permanent removal of a vital court record of proceeding (the master audio recording) eclipses any resemblance of "time barring," laches, res judica, etc, and thus precludes any available or reasonable due process for Plaintiff, Eugene Wzorek, resulting in ongoing violation and loss of Due Process, as accompanying a profound and

persistent denial of Plaintiff's Civil Rights;

Then Plaintiff, Petitioner and sufferer Wzorek cites that since vital case evidence remains and thus has been missing since approximately 26 June 1990, fully several weeks prior to USCOA Seventh Circuit's decision in that case itself;

Then Defendant (City of Chicago et al) and acting Corporation Counsel Lawrence Rosenthal, but also others acting on behalf as corporation counsel for Defendant, are by rule and law barred from further filings with this Court under Rule 11(e), from the date of 26 June 1990, carrying forward unto the date of this filing, citing outstanding and continuing violation of Rule 11(e) by Defendant, and or lack of compliance in allowing for the presentation of physical evidence in subsequent proceedings which may have corrected this violation, resulting in flawed renderings and decisions against Plaintiff Wzorek, whom has incurred numerous and un-tolled damages as direct result;

And citing that Rule 11(e) specifically prevents any Answer ("motion" or pleading) whatsoever on the part of Defendant to Petitioner or this Court; then in this instance and as specifically per Plaintiff Wzorek's Petition for Emergency Hearing: Writ of Certiorari regarding these present, pressing and most urgent matters as set before the Court;

And with outstanding decisions against Plaintiff, Eugene Wzorek, that currently stand as presenting by themselves continuing and further violations of Rule 11(e); but also as standing in gross violation of the principle of trial by record, when as a fact decisions of the lower courts have to date refused to allow presentation of physical evidence in Plaintiff's various, prior motions supporting fraud, missing or altered records, Rule11(e), or decisions resulting in denial of simple procurement of copies of master court audiotape recordings, which unlike written transcripts according

to USCOA Seventh Circuit Justice Richard Posner remain an original record of the case, regarding any question or dispute of facts and or testimony;

And citing that in any case, Defendant's Fraudulent Concealment (of Dr. Jan Fawcett's expert witness testimony, but also Defendant's acting counsel Rosenthal's records removal and other matters) tolls any applicable statute of limitations;

Then also Northern District Illinois E.D., and USCOA Seventh Circuit courts are by Rule 11(e) [attachment H, Rule 11(e)] similarly barred from further filing in this present Petition, until such a time as requested missing vital records are returned to and present in the Court's record, and that (should it happen) will require the collective efforts and decision of the Justices of this Most Esteemed Court, Your Honors;

As by the true hand of Justice being delivered unto the bosom of this Court in this most urgent pleading and Petition for Emergency Hearing: Writ of Certiorari as presented to Your Honors, Petitioner Eugene Wzorek seeks to be made whole again in the law, by Your Honors' grace.

Representing pro se,

_____ this ___ day of _____ , 2018

Eugene Wzorek
4344 S. Honore Street
Chicago, Illinois 60609
773-254-3582

In Witness hereof,

_____ _____
Name **commission**

Appendix A

AS PUBLISHED.
US Court of Appeals for the Seventh Circuit,
906 - F2D - 1180, case nos. 89-1868, 89 - 2988.

Eugene Wzorek, Petitioner - Appellee,
v.
CITY OF CHICAGO,
a Municipal Corporation,
Respondent - Appellant

Argued 11 May 1990
Decision, filed 13 July 1990

Record of which comprises
the following nine (9) pages.

906 F.2d 1180

United States Court of Appeals,

Seventh Circuit.

Eugene WZOREK, Petitioner–Appellee,

v.

CITY OF CHICAGO, a Municipal Corporation, Respondent–Appellant.

Nos. 89–1868, 89–2988.

Argued May 11, 1990.Decided July 13, 1990.

Terminated employee sued city. The United States District Court for the Northern District of Illinois, Eastern Division, Brian Barnett Duff, J., held the city in civil contempt, finding that the employee's discharge violated a decree seeking to limit the effects of political patronage in the treatment of city employees. Following orders awarding relief to employee, 708 F.Supp. 954 and 718 F.Supp. 1386, city appealed. The Court of Appeals, Cummings, Circuit Judge, held that: (1) city could be held liable for the impermissible political motivations of its "middle managers," and (2) employee was not entitled to recover damages for medical expenses and mental distress.

Affirmed in part, and reversed in part.

West Headnotes (3)Collapse West Headnotes

Change View

1**Contempt**

Persons liable

Under decree seeking to limit effects of political patronage in treatment of Chicago employees, city could be held liable, in civil contempt action, for impermissible political motivations of its "middle managers" which violated terms of decree, even assuming its top supervisors were unaware of motivations.

3 Cases that cite this headnote

93Contempt

93IActs or Conduct Constituting Contempt of Court

93k29Persons liable

2**Interest**

Labor relations and employment

Municipal Corporations

Compensation after discharge, suspension, or retirement

Discharge of City truck driver for involvement in municipal partisan politics violated consent decree and required the City to pay him back pay, prejudgment interest, and medical prescription expenses.

3 Cases that cite this headnote

219Interest

219IIITime and Computation

219k39Time from Which Interest Runs in General

219k39(2.5)Prejudgment Interest in General

219k39(2.40)Labor relations and employment

268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k220Compensation

268k220(6)Compensation after discharge, suspension, or retirement

3**Courts**

Previous Decisions in Same Case as Law of the Case

Doctrine of law of case prevents reconsideration of decision barring unusual circumstances or compelling reason.

8 Cases that cite this headnote

106Courts

106IIEstablishment, Organization, and Procedure

106II(G)Rules of Decision

106k99Previous Decisions in Same Case as Law of the Case

106k99(1)In general

(Formerly 228k99(1))

Attorneys and Law Firms

*1180 John L. Gubbins, Linda Friedman, Gubbins & Associates, Mark LeFevour, Chicago, Ill., and Terrance Mitchell, Homewood, Ill., for plaintiff-appellee.
Lawrence Rosenthal, Asst. U.S. Atty., Arthur N. Christie, Mary L. Smith, James D. Montgomery, Corp. Counsel, Kelly R. Welsh, Asst. Corp. Counsel, and Ruth M. Moscovitch, Asst. Corp. Counsel, Appeals Div., Jonathan P. Siner, Mardell Nereim, Office of the Corp. Counsel, and Donald Hubert, Chicago, Ill., for defendant-appellant.
Before CUMMINGS, EASTERBROOK and RIPPLE, Circuit Judges.

Opinion

CUMMINGS, Circuit Judge.
The City of Chicago (the "City") appeals from two orders of the district court involving a finding of civil contempt against the City under the so-called *Shakman* decree, which seeks to limit the effects of political patronage in the treatment of City employees. See *Shakman v. Democratic Org. of Cook County*, 481 F.Supp. 1315, 1356–1359 (N.D.Ill.1979), reversed in part *sub nom. Shakman v. Dunne*, 829 F.2d 1387 (7th Cir.1987), certiorari denied, 484 U.S. 1065, 108 S.Ct. 1026, 98 L.Ed.2d 991.
The first order (appealed in our case No. 89–1868) is dated April 27, 1989. It requires the City to pay petitioner Eugene Wzorek $145,160.68 in back pay, prejudgment interest, and medical and prescription expenses as compensation for terminating Wzorek as a City truck driver because of his involvement in municipal partisan politics. The second order under appeal (our No. 89–2988) is dated September 6, 1989. *1181 In it, the court: (1) denied petitioner's reinstatement to his city job on the ground that he was still emotionally incapable of returning to work; (2) increased the amount of back pay by $14,500, plus $362.50 prejudgment interest; (3) added front pay for one year (with a present value of $33,518.17) in lieu of reinstatement; and (4) ordered the City to provide for petitioner's psychiatric treatment for two years at a cost not to exceed $150,000. See *Wzorek v. City of Chicago*, 708 F.Supp. 954 (N.D.Ill.1989).
The City argues that the petitioner failed to prove that those City officials with authority to terminate him acted for political reasons and also that the award for psychiatric care was in error. The relief ordered by the district court in its April 27, 1989, order, as supplemented in its September 6, 1989, order, is affirmed except with respect to payment for Wzorek's psychiatric treatment for the next two years. *Wzorek v. City of Chicago*, 718 F.Supp. 1386 (N.D.Ill.1989).
I.
A.
In the main, the City does not attempt to meet the heavy burden under Fed.R.Civ.Proc. 52(a) of proving that the district court's factual findings were clearly erroneous. Instead, the City primarily argues that, even under the facts found by the district court, the City cannot be held liable for the

impermissible political motivations of its “middle managers” which violate the terms of the *Shakman* decree if its top supervisors were unaware of those motivations.

Petitioner Wzorek, now 45, was employed by the City of Chicago's Department of Sewers as a probationary truck driver. During his city employment, Wzorek was a resident of the 12th Ward on Chicago's southwest side, where he supported the campaign of the present Mayor Richard M. Daley, financially and otherwise, in Daley's unsuccessful 1983 mayoral primary campaign. Harold Washington won the primary election.

While a probationary employee, Wzorek received an estimable 85 out of 100 performance rating. During the crucial period of Wzorek's employment, Eugene Barnes was the City's Acting Commissioner of the Department of Sewers. William Sommerford, the General Superintendent of the Cleaning Division for the Department of Sewers, and Ned Madia, a foreman of the Cleaning Division, were supervisors of Wzorek. Sommerford and Madia were hostile to the Daley 1983 mayoral primary campaign. After discovering that the petitioner had contributed money to the Daley campaign, Sommerford told the petitioner not to contribute again because he could get into trouble later down the line, and that Wzorek better hope the right candidate was going to win the primary. Petitioner was required to remove his Daley button and bumper stickers while others were permitted to wear their rival Jane Byrne and Harold Washington buttons. Sommerford also told Wzorek to pay his dues to the 12th Ward Regular Democratic Organization and that the restrictions of the *Shakman* decree could be avoided. Madia criticized Richard M. Daley and stated that Wzorek “better shape up” and pay 12th Ward dues.

When Eugene Barnes became Acting Commissioner of the Department of Sewers under Mayor Washington he told his supervisors that he was not going to make the 800 employees of that department into discharge-proof career service personnel. Barnes noted that the 27th Ward had supported Jane Byrne in the primary election. Under Barnes, 57 Department of Sewers probationary employees were discharged, including 29 from the 27th Ward. Barnes also allowed the petitioner to be fired as an unsatisfactory employee upon the recommendation of Sommerford. Although Sommerford later testified that petitioner was a good employee, on June 29, 1984, Barnes wrote to Dr. Charles Pounian, Commissioner of Personnel, that Barnes intended to discharge petitioner for poor work performance, the excuse also given by Sommerford. Consequently, on July 6, Pounian wrote petitioner that he had been discharged for that reason.

*1182 The district judge found that Wzorek's political activities were a motivating factor in his discharge. He noted that petitioner's three supervisors wanted to discharge petitioner for his unsympathetic political activities and therefore had recommended that Barnes fire him.

B.

A bench trial on liability was held during four days in June and July 1988 and the damages issue was heard in November 1988. On March 21, 1989, the district court awarded the petitioner damages in

the amount of $145,160.68. *Wzorek v. City of Chicago*, 708 F.Supp. 954 (N.D.Ill.1989) (back pay of $132,825.33, plus prejudgment interest of $13,833.35 and $4,620 in medical expenses and prescriptions; offset by $6,118 in unemployment compensation payments made by the State of Illinois to the petitioner and refunded to the State by the City). However, the court reserved ruling on whether the petitioner should be reinstated to his job in the future and did not specify the dollar amount of the "front pay and benefits" that might be awarded if reinstatement was not appropriate. The court stated that it would treat Wzorek's request for reinstatement in supplemental proceedings "within a reasonable time after November 1, 1989." *Id.* at 961. The City did not appeal from the March 21 judgment. On April 27, 1989, the district judge directed the City to pay the March 21 judgment by May 1, 1989. This time the City did appeal.

The City filed an emergency motion to stay the April 27 order. The petitioner asserted that this Court lacked jurisdiction to consider the appeal, contending that the March 21, 1989, judgment was final and that the time in which to file an appeal from that judgment had run. This Court subsequently decided that the March 21, 1989, order was not final and that this Court has jurisdiction to review the April 27, 1989, non-final order under the collateral-order doctrine of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546–547, 69 S.Ct. 1221, 1225–1226, 93 L.Ed. 1528; *Palmer v. City of Chicago*, 806 F.2d 1316, 1318–1320 (7th Cir.1987), certiorari denied, 481 U.S. 1049, 107 S.Ct. 2180, 95 L.Ed.2d 836. We adhere to that ruling.

In July 1989, the petitioner requested a hearing on his possible reinstatement to his City job. A hearing was held on that subject on August 16. On September 6, 1989, the district court issued the findings and conclusions of law supporting the order described above. *Wzorek v. City of Chicago*, 718 F.Supp. 1386 (N.D.Ill.1989).

C.

Debate will undoubtedly continue regarding the wisdom of judicial restrictions on patronage. Compare R.F. Nagle, Constitutional Cultures: The Mentality and Consequences of Judicial Review 10, 37 & n. 71 (1989) with Laycock, "Notes on the Role of Judicial Review, the Expansion of Federal Power, and the Structure of Constitutional Rights," 99 Yale L.J. 1711, 1722–1724 (1990). Yet a majority of the Supreme Court has reaffirmed the vitality of the Court's line of cases holding that judicial restrictions may be placed upon "spoils systems" that violate the First Amendment. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990).

In any case, the City asserts that it does not take issue with the anti-patronage case law and that it now respects the *Shakman* decree. Nor does the City argue that political affiliation could be considered relevant in any way to the petitioner's City job. See *Rutan*, 110 S.Ct. at —— n. 5 (Stevens, J., concurring). The City argues instead that it cannot be held vicariously liable for the actions of maverick middle managers taking politically motivated actions on their own because it

never consented to assume such liability. To understand that claim a brief overview of the history of the extensive *Shakman* litigation is necessary.

In 1969, an independent candidate running as a delegate to the Illinois Constitutional Convention and one of his supporters filed a class action suit under 42 U.S.C. §§ 1983, 1985, 1986, and 1988 against various public and private bodies, including the City and its Mayor, alleging deprivations of *1183 freedom of speech and association, and violations of due process and equal protection of the law. *Shakman v. Democratic Org. of Cook Co.*, 310 F.Supp. 1398 (N.D.Ill.1969). The plaintiffs alleged that the local Democratic Party, working in conjunction with patronage schemes in place within the City and Cook County (the "County") governments, had used governmental power and public funds to create a system of rewards and punishments that effectively stifled speech, freedom of association, and independent political activity on the part of City and County employees. The plaintiffs alleged that this patronage system violated constitutional and other rights of political candidates, voters, taxpayers, and city workers. The district court dismissed the suit, ruling in part that the plaintiffs lacked standing to allege the harm done to patronage employees. *Id.* at 1402. This Court reversed upon reasoning not directly relevant to these appeals and remanded the case for further proceedings. *Shakman v. Democratic Org. of Cook Co.*, 435 F.2d 267 (1970). After the Supreme Court denied certiorari, 402 U.S. 909, 91 S.Ct. 1383, 28 L.Ed.2d 650, the plaintiffs entered into a consent decree with the defendants in 1971, the text of which may be found in *Shakman v. Democratic Org. of Cook Co.*, 481 F.Supp. 1315, 1356–1359 (N.D.Ill.1979). On May 5, 1972, the district court approved the consent decree as a settlement under Rule 23(e) of the Federal Rules of Civil Procedure. The decree established municipal liability through various provisions, including one which enjoins the City "from directly or indirectly, in whole or in part: (1) conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor." 481 F.Supp. at 1358 (¶ E). The decree is binding upon "the present and future officers, members, agents, servants, employees and attorneys of" the City. *Id.* at 1358 (¶ C(44)).

In 1976, this Court affirmed a finding of civil contempt against the City and the City's then Director of Administration of the Department of Streets and Sanitation, Michael Cardilli, for violating ¶ E of the decree quoted above by requiring city employees to circulate petitions for the candidacy of then Mayor Richard J. Daley. *Shakman v. Democratic Org. of Cook Co.*, 533 F.2d 344 (hereinafter *Cardilli*), certiorari denied, 429 U.S. 858, 97 S.Ct. 156, 50 L.Ed.2d 135. On the issue most relevant to these consolidated appeals, the City argued that it could not be held in contempt "because Cardilli's [politically motivated] conduct was clearly outside the scope of his employment." *Id.* at 352. The Court disagreed, holding that Cardilli's actions were within the scope of his employment. Therefore the plaintiffs were not required to show that supervisory employees were authorized to undertake political functions on the job. *Id.* at 352–353.

II.

A.

1 Here clear and convincing evidence shows that the reason for Wzorek's discharge was that he was a Richard M. Daley loyalist rather than a supporter of then Mayor Byrne or future Mayor Washington. His failure to pay his 12th Ward dues was another factor held against him. The district court was not clearly erroneous in finding that the supposedly poor work record compiled by Wzorek was a pretext for his firing.

In rejecting the City's argument that it should not be held liable for the actions of lower-level supervisors, the district court cited *Oxman v. WLS–TV*, 846 F.2d 448 (7th Cir.1988). That case involved a claim under the federal Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.*, in which the defendant employer claimed that the wrongful termination of the plaintiff based upon his age could not be imputed to the supervisor who actually made the decision to fire the plaintiff. This Court held that it was "reasonable," based on the facts in the record of that case, to infer that the improper reasons found to have motivated a lower-level supervisor in recommending termination of the plaintiff *1184 were shared by the supervisor who actually terminated the plaintiff. *Id.* at 456–457. This holding in *Oxman* is not an application of respondeat superior principles. Instead it is a rule governing permissible inferences in allegedly pretextual terminations for illegitimate reasons. Such an inference is not available in this case. The district court specifically found that Barnes was "misinformed" as to the true grounds for Wzorek's termination, *Wzorek*, 708 F.Supp. at 959–960, and the petitioner has not shown that the court's finding was clearly erroneous.

Nevertheless the City's argument that it is not liable for its agents' breaches of the *Shakman* decree is foreclosed by the holding discussed above. *Cardilli*, 533 F.2d at 352–353. The Court not only called the contrary argument "patently frivolous," but it put the City on notice that it was under an obligation to police its employees, lest the door be opened " 'for wholesale disobedience of the Court.' " *Id.* at 353 n. 13 (quoting *Singer Mfg. Co. v. Sun Vacuum Stores, Inc.*, 192 F.Supp. 738, 741 (D.N.J.1961)). Penalties for civil contempt here are intended to coerce the City's managers and supervisors into taking the concrete steps necessary to prevent all of those with supervisory responsibilities from violating the decree. Blind faith in middle managers will not do.

There is no doctrine of respondeat superior under 42 U.S.C § 1983. *Riordan v. Kempiners*, 831 F.2d 690, 695 (7th Cir.1987). That is irrelevant, however, because this is a civil contempt action based upon a consent decree entered into well in advance of *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611, which gave birth to municipal liability under the civil rights statutes. At the time the City settled the *Shakman* case with the consent decree, municipalities could not be held liable at all as "persons" for purposes of § 1983. *Monroe v. Pape*, 365 U.S. 167, 187–192, 81 S.Ct. 473, 484–487, 5 L.Ed.2d 492. Therefore the only conceivable function of having the City bind itself was to be answerable for the deeds of its employees. There is

no reason to think that the City divined the compromise that was to come years later in *Monell:* cities become "persons," but are not vicariously liable.

Counsel for the City stated at oral argument in this appeal that the City made "an improvident concession" in 1976 in arguing the *Cardilli* case before this Court by admitting to respondeat superior liability. It is far more likely that the City, under intense pressure to resolve the *Shakman* litigation, made large concessions in 1971 that a new generation of City managers now wishes to take back. Nowhere in the *Shakman* decree is the City shielded from the acts of so-called "middle managers," an ill-defined group of supervisory workers who are outside the reach of the decree. The voluminous jurisprudential record of the *Shakman* litigation suggests instead that the extent of City liability has always been considered vast. See, *e.g.,* *Shakman v. Democratic Org. of Cook Co.*, 569 F.Supp. 177, 184 (N.D.Ill.1983) (detailed implementation decree enforcing prohibition on patronage hiring) (judgment "applies to [City's and Mayor's] successors in office, to all of their agents and employees and to all others who receive notice of the Judgment and who are in active concert or participation with any of such persons.").

The consent decree binds the City to liability under respondeat superior analysis. In this case there can be no argument that the supervisors who had the petitioner fired for his political activity acted outside the scope of their employment. The City's managers must assume responsibility for the politically motivated actions of employees which violate the decree. That may not be a simple task within a municipal government of 40,000 employees, but it is a task the City assumed by consenting to the decree.

B.

2 The case law fully supports an award of damages for a violation of the decree. *Hutto v. Finney*, 437 U.S. 678, 691, 98 S.Ct. 2565, 2573–2574, 57 L.Ed.2d 522 (civil contempt may be punished by a remedial fine, compensating party who won *1185 injunction for the effects of noncompliance); *Connolly v. J.T. Ventures*, 851 F.2d 930, 933 (7th Cir.1988) (courts have broad discretion to fashion remedies tailored to harm while considering likely effects of alternative remedies). The City's only complaint involves the award for psychiatric damages. In compelling the City to pay up to $150,000 for Wzorek's psychiatric treatment for the next two years, the district court reasoned that Wzorek's discharge triggered Wrozek's mental illness and made him unfit to obtain employment.

3 Before this case was assigned to Judge Duff, predecessor Judge Decker had stricken that part of Wzorek's petition requesting damages for medical expenses and mental distress. The doctrine of the law of the case prevents reconsideration of that decision barring "unusual circumstances or a compelling reason." *Parts and Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 231 (7th Cir.1988), certiorari denied, 493 U.S. 847, 110 S.Ct. 141, 107 L.Ed.2d 100. There has been no showing that would make this doctrine inapplicable.

Law of the case does not prevent a reviewing court from examining the earlier decision. *Cohen v. Bucci*, 905 F.2d 1111, 1112 (7th Cir.1990). Numerous factors support Judge Decker's decision. First, Judge Duff in his September 1989 conclusions of law found that "it is not clear to what degree Wzorek's present [mental] condition is the result of the City's original violation." *Wzorek*, 718 F.Supp. at 1388. Second, the district court based the $150,000 award for psychiatric care upon: (1) the petitioner's lack of resources and failure to seek public assistance or insurance coverage; and (2) the City's failure to pay the March 1989 order awarding Wzorek $145,160.68 promptly instead of appealing therefrom. *Id.* However, this Court had stayed that order and the City's exercise of its right to appeal cannot be the basis for awarding Wzorek his psychiatric expenses for the ensuing two years. Since the City's conduct was never alleged to be deliberate and malicious, recovery for mental distress was not warranted. *Thompson v. Johnson*, 410 F.Supp. 633, 643 (E.D.Pa.1976), affirmed without published opinion, 556 F.2d 568 (3d Cir.1977). Third, the medical records show that Wzorek's physician did not even refer Wzorek to a psychiatrist until more than a year after discharge, thus weakening any inference that his condition was caused by the discharge, nor has he sought psychiatric care even though such care is obtainable without ability to pay. All of these reasons support Judge Decker's grant of the City's motion to strike this request for recovery.

III.

The order requiring the City to pay $150,000 worth of petitioner's psychiatric bills is reversed. In all other respects, the April and September 1989 orders are affirmed.

All Citations

906 F.2d 1180

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